

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ACLU OF TENNESSEE, INC.

Intervening Plaintiff,

V.

THE CITY OF MEMPHIS,

Defendant.

No. 2:17-cv-02120-JPM-dkv

DEFENDANT'S MOTION FOR LEAVE TO REPLY

The Defendant, the City of Memphis ("the City"), moves for leave to file a reply brief in support of its Post-Trial Brief on Standing (ECF No. 142).¹

During the hearing on this matter, Defendants moved for a Rule 52(c) judgment on partial findings on the issue of standing. The Court requested that Defendants brief the standing issue once the record was complete. (Trial Tr. Vol. I, p. 110, PageID 5183). At the conclusion of the proceeding, the Court instructed Defendant to file its post-trial brief on the issue of standing by September 14, 2018, and for Intervening Plaintiff, American Civil Liberties Union of Tennessee, Inc. ("ACLU-TN") to file its response by September 24, 2018. (Trial Tr. Vol. 7, pp. 1005-07, PageIDs 6084-86). The parties adhered to that briefing schedule, and the ACLU-TN filed its response brief on the issue of standing (ECF No. 144) on September 24, 2018.

The City now requests permission to file a short Reply brief in support of its Post Trial Brief on Standing, which will not exceed five pages in length. In the Reply, the City seeks to further address the issue of the ACLU-TN's burden of proof on the issue of standing in this civil

¹ The City's Post-Trial Brief on Standing was, in effect, the briefing on its oral motion for a Rule 52(c) judgment on partial findings on the issue of standing. The Court may consider the instant Motion for Leave to Reply as pursuant to Local Rule 7.2(c).

contempt action. In its Response, the ACLU-TN cited several cases in support of its argument that the burden of proof on standing in a civil contempt action is by a preponderance of the evidence. However, the cases cited by ACLU-TN are neither contempt cases nor cases regarding standing.

The City respectfully requests that the Court grant its Motion for Leave to Reply so that it may clarify this issue.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Jennie Vee Silk

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CERTIFICATE OF CONSULTATION

Pursuant to Local Rule 7.2(a)(B), on September 27, 2018, counsel for the city, Jennie Silk conferred with counsel for Intervening Plaintiff, Thomas Castelli, by telephone and email regarding the relief sought in this Motion. Mr. Castelli advised that the Intervening Plaintiff opposes the City's Motion for Leave to Reply.

s/ Jennie Silk

Jennie Silk

CERTIFICATE OF SERVICE

I hereby certify that on September 27, 2018 the foregoing will be served by this Court's ECF system to:

Thomas H. Catelli, Esq.
Mandy Floyd, Esq.
ACLU Foundation of Tennessee
Post Office Box 120160
Nashville, Tennessee 37212

/s/ Jennie Vee Silk
Jennie Vee Silk